

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ASHA SMITH and EMMA NEDLEY,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

UNIVERSITY OF PENNSYLVANIA,

Defendant.

Case No. 2:20-cv-02086-TJS

Hon. Timothy J. Savage

**DECLARATION OF MICHAEL L. KIDNEY IN SUPPORT OF
DEFENDANT TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA'S
OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Michael L. Kidney, declare that I am over 18 years of age and otherwise competent to testify as to the matters herein, which are based on my personal knowledge:

1. I am an attorney with Hogan Lovells US LLP and am a member of the bar of the District of Columbia and am admitted *pro hac vice* to practice before this Court in the above-captioned matter. I represent Defendant Trustees of the University of Pennsylvania ("Penn") in the above-captioned matter. I submit this declaration in support of Penn's Opposition to Plaintiffs' Motion for Class Certification.

2. Attached as Exhibit 1 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, that reflects the number of students living on campus as of February 21, 2020, and is identified as PENN_00001294.

3. Attached as Exhibit 2 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, that reflects the number of students living on campus as of April 2020, and is identified as PENN_00000950.

4. Attached as Exhibit 3 is a true and correct copy of a document from Penn's production, which relates to the tuition and fee rates, including the three fees charged by Penn for the spring 2020 semester, and is identified as PENN_00000871 – PENN_00000882.

5. Attached as Exhibit 4 is a true and correct copy of a document from Penn's production, which relates to the Student Intervention Services provided by Penn during the spring 2020 semester, and is identified as PENN_00001318 – PENN_00001319.

6. Attached as Exhibit 5 is a true and correct copy of a document from Penn's production, which relates to Penn's COVID-19 operations as of April 24, 2020, and is identified as PENN_00000088 – PENN_00000097.

7. Attached as Exhibit 6 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, that reflects the number of appointments conducted by Penn's Student Health and Penn's Counseling and Psychology Services ("CAPS") during the spring 2020 semester, and is identified as PENN_00001320.

8. Attached as Exhibit 7 is a true and correct copy of a document from Penn's production, which relates to CAPS services provided to students during the spring 2020 semester, and is identified as PENN_00000162.

9. Attached as Exhibit 8 is a true and correct copy of a document from Penn's production, which is entitled University Life Annual Report 2020 and provides information about the services, activities, and spaces Penn provided throughout the spring 2020 semester, and is identified as PENN_00000615 – PENN_00000693.

10. Attached as Exhibit 9 is a true and correct copy of a document from Penn's production, which is entitled COVID-19 Operations and provides information about services, activities, and spaces Penn provided following the onset of the pandemic in the spring 2020 semester, and is identified as PENN_00000902 – PENN_00000944.

11. Attached as Exhibit 10 is a true and correct copy of a document from Penn's production, which relates to campus recreation and fitness, and is identified as PENN_00001249.

12. Attached as Exhibit 11 is a true and correct copy of a document from Penn's production, which reflects a screen shot of the fitness and recreation schedule Penn implemented following the onset of the pandemic in the spring 2020 semester, and is identified as PENN_00001181.

13. Attached as Exhibit 12 is a true and correct copy of a document from Penn's production, which relates to refunds issued to individuals who purchased semester-long passes for group exercise classes for the spring 2020 semester, and is identified as PENN_00001165 – PENN_00001180. Pursuant to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"), the names of individuals to whom refunds were issued were redacted from this document as part of Penn's production.

14. Attached as Exhibit 13 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, that reflects the events and activities hosted by the Graduate Student Center during the

spring 2020 semester, and is identified as PENN_00001402. Pursuant to FERPA, the names and personal information of students who participated in these events and activities were redacted from this document as part of Penn's production.

15. Attached as Exhibit 14 is a true and correct copy of a document from Penn's production, which reflects announcements from the Family Center at Penn on April 22, 2020, and is identified as PENN_00001322 – PENN_00001327.

16. Attached as Exhibit 15 is a true and correct copy of a document from Penn's production, which reflects announcements from the Family Center at Penn on April 3, 2020, and is identified as PENN_00001328 – PENN_00001333.

17. Attached as Exhibit 16 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, that reflects the spring 2020 semester technology grants awarded by the Penn Graduate School of Education, and is identified as PENN_00001299. Pursuant to FERPA, with the exception of Plaintiff Smith, the personal information of students and information specific to Plaintiff Smith that is protected by privacy considerations were redacted from this document as part of Penn's production.

18. Attached as Exhibit 17 is a true and correct copy of a document from Penn's production, which reflects the services provided by Student Health (Wellness at Penn) during the spring 2020 semester, and is identified as PENN_00000508.

19. Attached as Exhibit 18 is a true and correct copy of a document from Penn's production, which reflects a sample Penn financial aid award notice for academic year 2019-2020, and is identified as PENN_00000863 – PENN_00000864.

20. Attached as Exhibit 19 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, which relates to Plaintiff Smith's student account activity and the COVID-related emergency technology grant, and is identified as PENN_00000862.

21. Attached as Exhibit 20 is a true and correct copy of a document from Penn's production, which has been converted from an Excel spreadsheet to a PDF for purposes of this filing, which relates to the COVID-related emergency technology grant Plaintiff Smith received, and is identified as PENN_00000857.

22. Attached as Exhibit 21 is a true and correct copy of Plaintiff Smith's Answers and Objections to Defendant's First Set of Interrogatories, dated November 24, 2021.

23. Attached as Exhibit 22 is a true and correct copy of a document which relates to Plaintiff Nedley's student account and payment history, which Plaintiff Nedley produced on February 23, 2022 (after the close of class certification discovery), identified as NEDLEY 000008.

24. Attached as Exhibit 23 is a true and correct copy of pages from Nedley's production which relate to her student account and payment history, identified as NEDLEY 000004 – NEDLEY 000005.

25. Attached as Exhibit 24 is a true and correct copy of Plaintiffs' Responses and Objections to Defendant's First Set of Requests for Production, dated November 24, 2021.

26. Attached as Exhibit 25 is a true and correct copy of the Expert Report of Benjamin S. Wilner, Ph.D., dated January 10, 2022.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of February 2022, in Montgomery County, Maryland.


Michael L. Kidney